



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: SEPTEMBER 21, 2022

IN THE MATTER OF:

Appeal Board No. 623698

PRESENT: GERALDINE A. REILLY, MEMBER

In Appeal Board Nos. 623697, the claimant appeals from the decisions of the Administrative Law Judge filed May 19, 2022, which sustained the initial determinations holding the claimant ineligible to receive benefits, effective March 15, 2021 through June 14, 2021, and July 12, 2021 through August 1, 2021, on the basis that the claimant did not comply with registration requirements.

In Appeal Board Nos. 623698, the claimant appeals from the decisions of the Administrative Law Judge filed May 19, 2022, which sustained the initial determinations holding the claimant ineligible to receive benefits, effective November 16, 2020 through November 22, 2020, March 8, 2021 through March 14, 2021, and July 5, 2021 through July 11, 2021, on the basis that the claimant did not comply with certification requirements.

At the combined telephone conference hearings before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There was an appearance by the claimant.

Our review of the record reveals that the case should be remanded to hold a hearing. We have determined that further testimony and other evidence is needed on the issues of the claimant's ineligibility for benefits on the bases of failure to certify and register for benefits as required for the periods at issue.

Specifically, further testimony and evidence shall be received into the record regarding the claimant's stated reasons and the circumstances surrounding his

failure to comply with certification and registration requirements, to determine whether those circumstances might constitute good cause pursuant to the provisions of 12 NYCRR 473.1 and 12 NYCRR 473.2.

Initially, we note that although the "Call History Log" was received into evidence as Hearing Exhibit 4 and relied upon by the hearing Judge, this log was not sufficiently identified or authenticated. Accordingly, the

Commissioner of Labor shall be represented at the remand hearing, and shall produce a witness to provide the appropriate testimony to identify and authenticate this document, and be questioned about its contents. This shall include, but not be limited to, what telephone number was called by the claimant that resulted in this record. A Commissioner of Labor witness shall also be prepared to identify and authenticate the Certification Record Report, received into evidence as Hearing Exhibit 3.

The Commissioner of Labor representative shall produce an individual to provide testimony and other evidence to establish whether or not the claimant could have filed an application for benefits in Yiddish on October 29, 2020 (either online or by telephone), whether the claimant handbook was available in Yiddish at the time he filed his claim, and how the claimant would have been made aware of this language accessibility. If translations were available at the time the claimant filed his claim, the Commissioner's representative shall produce a copy of the handbook in Yiddish, as it existed in October 2020, and screen shots of the online application for benefits in Yiddish.

The Commissioner's representative shall also produce evidence to establish if, when, and how the claimant would have been made aware of the requirements to register and certify weekly for benefits. This evidence may include, but need not be limited to, identification and authentication of the "Notice" information received into evidence as Hearing Exhibit 6.

If evidence is produced that Yiddish translations were available in October 2020, the claimant shall be questioned regarding what, if any, attempts he made to find out if Yiddish translation was available to him when applying for benefits, or whether the handbook was available in Yiddish.

The claimant shall also be questioned further regarding his testimony that he was not aware that he needed to certify, and confronted with the information that he certified for four weeks in late 2020 and one week in March 2021, as

indicated in the Certification Record Report.

Since the claimant testified that it was not until his sister helped him reset his PIN and advised him that he needed to call weekly for benefits that he was aware of this requirement, and since he also testified that he does not remember when that occurred, the claimant's sister shall be called as a witness to testify at the remand hearing and shall be questioned regarding these matters.

The hearing Judge may receive any other evidence necessary to decide the issues.

Any additional documentation produced at the remand hearing should be received into evidence after the appropriate confrontation and opportunity for objection.

Now, based on all of the foregoing, it is

ORDERED, that the decisions of the Administrative Law Judge be, and the same hereby are, rescinded; and it is further

ORDERED, that the cases shall be, and the same hereby are, remanded to the Hearing Section to hold a hearing on the issues in Appeal Board Nos. 623697 and 623698, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above actions to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render new decisions, on the initial determinations holding the claimant ineligible to receive benefits on the basis that the claimant did not comply with registration and certification requirements, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

GERALDINE A. REILLY, MEMBER

